

WP(C) 5304/2006
BEFORE
THE HON'BLE MR JUSTICE RANJAN GOGOI
JUDGMENT AND ORDER
(ORAL)

1. An order dated 16.10.2006 cancelling the lease of the petitioner for operation of the Bogibil (Choulkhowa) to Karengbali Commercial Cargo cum Passenger Ferry (hereinafter referred to as Ferry Service) for the period from 28.10.2005 to 20.10.2008 has been assailed in the writ petition. Another order of the same date i.e. 16.10.2006 for operation of the aforesaid Ferry Service by the Respondent No.6 for the period from 21.10.2006 to 20.10.2007 has also been assailed in the present writ petition.

2. The facts necessary for an effective adjudication of the issues involved in the writ petition may be noticed at this stage.

By an order dated 4.10.2005, passed by the Director, Inland Water Transport, Govt. of Assam, a lease to operate the Ferry Service in question was granted to the petitioner for the period as already noticed. In terms of the agreement executed by and between the parties though the lease period was to be for 3 years, fresh agreements were required to be executed on the expiry of every 6 months and payment of the lease money as mentioned in the order dated 4.10.2005, was required to be made. Under Clauses 7 and 13 of the Agreement executed by and between the parties, it was visualized that the lessee would put into service only such boats which had a proper registration and valid service certificate. The agreement also visualized that the boats pressed into service are duly insured by any nationalized Insurance Company.

In terms of the lease granted to the petitioner and the agreement executed, as noticed above, and upon payment of the first instalment of the dues payable, the petitioner started operating the Ferry service w.e.f. the stipulated date i.e. 21.10.2005. However, it appears that from the month of January, 2006, itself, disputes and differences between the parties cropped up with regard to the deployment of boats by the Lessee and alleged violation of clauses 7 and 13 of the Agreement. Eventually, the said dispute led to a situation where on a finding that unauthorized boats were being used by the lessee, the Department sought to recover a penalty of over Rs.6.00 lakhs from the petitioner. As the petitioner did not respond to the notices issued requiring him to pay the said amount, the lease in question was cancelled. Thereafter, a fresh lease was granted to the Respondent No.6 for the period as already noticed. Aggrieved, this writ petition has been filed contending the cancellation of the petitioner's lease to be an arbitrary act, disclosing no good reasons in support thereof. The grant made in favour of the Respondent No.6 has also been assailed on a largely similar basis.

3. Though voluminous affidavits have been filed by the Respondent Nos 1, 2, 3, 4, 5 and 6 enclosing several documents and each of the said affidavits have been replied to by the petitioner, a perusal of the said affidavits, particularly the affidavit of the Director, Inland Water Transport, would go to show that the dispute lies within a short compass. As the version put forward by the Director is the official version, the Court would like to consider the said version in the first instance.

4. The Director, Inland Water Transport in the affidavit filed has taken the stand that as the petitioner had pressed into service six unauthorized boats, the particulars of which are available in the report prepared by the Assistant Commercial Officer, Inland Water Transport, Dibrugarh dated 4.8.2006, penalty was decided to be imposed which direction not having complied with by the petitioner, the Department was left with no option but to cancel the lease itself. The Director, in the affidavit filed, has further stated that, from time to time, the Additional Deputy Commissioner, Dibrugarh had drawn the attention of the

Department and its jurisdictional Officers based at Dibrugarh with regard to utilization of unauthorized boats by the petitioner while operating the Ferry Service. According to the Director, the petitioner was repeatedly told to mend his ways and not to utilize any such unauthorized boats in the Ferry Service. As the petitioner did not pay any heed to the warning given by the Department, the Director took the decision to impose penalty on the petitioner at the rates stipulated. The said penalty was worked out at Rs.6.49 lakhs by the Commercial Officer of the Inland Water Transport, Dibrugarh who had informed the petitioner on the said fact. As the penalty in question was not paid, the Department had no option but to cancel the lease of the petitioner and refrain from grant of a fresh lease w.e.f. 21.10.2006. Thereafter, according to the Director the available applications for operation of the Ferry Service were considered and the Respondent No.6 having been found to have made most lucrative and viable offer, the impugned order of fresh lease has been made in favour of the Respondent No.6 by the Director by the order dated 16.10.2006.

5. The stand of the Director being what has been noticed hereinabove, it will be necessary for the Court to put on record a brief resume of the correspondences exchanged by and between the parties so as to enable the Court to go into the legality of the decision making process that had led to the impugned cancellation and grant of the lease in favour of the Respondent No.6.

The records in original made available by Shri Bhuyan, learned Departmental Counsel, have been duly perused by the Court. On such perusal, it is clear that as early as on 6.1.2006, the petitioner was informed by the Commercial Officer, Inland Water Transport, Dibrugarh that he has been using unauthorized boats to operate the Ferry Service and that he should refrain from doing so. The letter dated 6.1.2006 was followed by another letter dated 4.2.2006. There was a public complaint dated 5.4.2006 in this regard. On 11.4.2006, the petitioner sought approval for use of 4 boats in addition of the one authorized boat, deployment of which was already permitted. On 1.6.2006 three of the boats in respect of which the petitioner sought permission for deployment, was allowed. Earlier to that, on 12.5.2006, the petitioner was granted permission to use two other boats i.e. SB Arsang and SB Taha, which belonged to another lessee.

6. While the matter was so situated, on 18.7.2006, the Addl. Deputy Commissioner, Dibrugarh wrote a letter to the Commercial Officer, Inland Water Transport, Dibrugarh with regard to the use of unauthorized boats by the petitioner. On 24.7.2006, the complaint of the Addl. Deputy Commissioner was forwarded to the Director. On 28.7.2006, the Commercial Officer, Dibrugarh in reply to the letter dated 18.7.2006 wrote to the Addl. Deputy Commissioner stating that necessary action is being taken to ensure that no unauthorized boats are pressed into the service by the petitioner. A copy of the said communication was endorsed to the petitioner as well as to the Assistant Commercial Officer, IWT, Dibrugarh who was directed to make an enquiry into the use of unauthorized boats by the petitioner. It appears that the Assistant Commercial Officer, IWT, Dibrugarh, conducted an enquiry and submitted a report dated 4.8.2006 stating that, on verification, the petitioner was found to have been using six unauthorized boats. It will, however, be necessary to note that in the enquiry held by the Assistant Commercial Officer, IWT the petitioner was not involved i.e. allowed to participate. Be that as it may, the enquiry report dated 4.8.2006 of the Assistant Commercial Officer, Dibrugarh was sent to the Director seeking his permission to impose a penalty on the petitioner. While the matter was so situated, the Addl. Deputy Commissioner, Dibrugarh sent a reminder to the Commercial Officer, Inland Water Transport, Dibrugarh to the effect that some action against the petitioner is necessary. On receipt of the said letter of the Addl. Deputy Commissioner, Dibrugarh, a reminder, in turn, was sent to the Director requesting a decision on the question of penalty to be imposed on the petitioner. On 26.9.2006, the Director approved the imposition of penalty on the petitioner. Thereafter, on 5.10.2006, the Commercial Officer, IWT, Dibrugarh imposed a penalty of Rs.6.49 lakhs on the petitioner. By another order of the same date i.e. 5.10.2006 the Director informed the petitioner that in the event the petitioner fails to pay the penalty, his l

ease will be liable to be cancelled. Thereafter, on 16.10.2006, the impugned cancellation was made by the Director.

7. As against the aforesaid facts, which are available on record, the stand of the petitioner may now be noticed. In the affidavits filed by the petitioner, the petitioner has denied that, at any point of time, he had used or pressed into service any unauthorized boat to operate the Ferry Service. The petitioner has brought on record a communication dated 18.8.2006 issued by him to the Commercial Officer, Inland Water Transport, Dibrugarh wherein the petitioner had stated that, apart from the main boat which was authorized to be used the petitioner was operating 4 other boats in respect of which authorization/permission had been granted by the Inland Water Transport. In the letter dated 18.8.2006, the petitioner had further mentioned that there were two other boats utilized by him from time to time to ferry VIPs as well as students and patients coming to the Medical College. The petitioner had taken the further stand that the use of the aforesaid two boats was known to the Department and process of grant of permission to use the said two boats was going on. There is another letter dated 23.9.2006 of the petitioner, on record, which is more or less to the same effect. The aforesaid two communications are available in the affidavit filed by the petitioner in reply to the counter affidavit filed by the Respondent No.6.

8. The above stated facts of the case as evident from the pleadings of the parties and the records in original, as placed before the Court, makes it abundantly clear that though there were numerous correspondences issued by the Department to the petitioner pointing out the alleged use of unauthorized boats, the Petitioner had denied the use of any such unauthorized boats. In this regard the contents of the petitioner's letters dated 18.8.2006 and 23.9.2006 have already been noticed. In none of the communications issued by the Department, the petitioner was informed of the precise details of the unauthorized boats along with their registration number and particulars that were allegedly used in the Ferry Service. In the enquiry held by the Assistant Commercial Officer, Inland Water Transport, Dibrugarh leading to the report dated 4.8.2006, wherein six unauthorized boats were identified, as already noticed, the petitioner was not involved or associated. In such circumstances, in view of the letters issued by the petitioner on 18.8.2006 and 23.9.2006, it must be held by the Court that the finding of the Department about the use of six unauthorized boats by the petitioner are the consequences of an exparte decision of the Respondents. That apart, the materials on record leaves the Court satisfied that, at no point of time, the petitioner was specifically informed that the authorities had in contemplation the cancellation of the petitioner's lease on grounds made known and specified. No opportunity was given to the petitioner to contest the proposed cancellation. As the above facts, in the considered view of the Court, clearly demonstrate that actions prejudicial to the petitioner have been taken on the strength of an unilateral decision of the Department without giving any opportunity to the petitioner, it must be held that the impugned cancellation made is in violation of the basic principles of natural justice. As the grant in favour of the Respondent No. 6 has necessarily to be understood to be consequential to the cancellation of the petitioner's lease, the Court is of the view that it will not be called upon, at this stage, to decide on the validity of the grant made in favour of the Respondent No.6, at the instance of the writ petitioner.

9. An order found to be legally infirm on account of violation of the principles of natural justice, particularly, on the ground of denial of reasonable opportunity, though a nullity in law, will not come in the way of a repeat of the same exercise after complying with all requirements of law and the principles of natural justice. I therefore allow the writ petition, Set aside the order dated 16.10.2006 cancelling the petitioner's lease, with liberty to the Department to re decide the matter after giving the petitioner due opportunity.

10. This Court has noticed that by virtue of the interim order passed by this Court, the Ferry Service is being run by the Department though for the smooth conduct of its business the Department had intended to appoint a lessee. In such circumstances, I am of the view that the Department should be directed to re

decide the matter within a period of 30 days from today during which period the Ferry Service will continue to be operated by the Department. Thereafter, depending on the outcome of the fresh process that the Department may now undertake, further orders, in accordance with law, will be passed with regard to the operation of the Ferry Service.

11. Consequently and in light of the above discussions the writ petition is allowed to the extent indicated above.